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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 200629-0174]

RTID 0648-XW023

Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; 2020-2021

Annual Specifications and Management Measures for Pacific Sardine

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is implementing annual harvest specifications and management measures for the northern subpopulation of Pacific sardine (hereafter, Pacific sardine), for the fishing year from July 1, 2020, through June 30, 2021. This final rule will prohibit most directed commercial fishing for Pacific sardine off the coasts of Washington, Oregon, and California. Pacific sardine harvest will be allowed only in the live bait fishery, minor directed fisheries, as incidental catch in other fisheries, or as authorized under exempted fishing permits. The incidental harvest of Pacific sardine will be limited to 20 percent by weight of all fish per trip when caught with other stocks managed under the Coastal Pelagic Species Fishery Management Plan or up to 2 metric tons per trip when caught with non-Coastal Pelagic Species stocks. The annual catch limit for the 2020-2021 Pacific sardine fishing year is 4,288 metric tons. This final rule is intended to conserve and manage the Pacific sardine stock off the U.S. West Coast.

DATES: Effective July 1, 2020.

ADDRESSES: A copy of the report “Assessment of Pacific Sardine Resource in 2020 for U.S.A. Management in 2020-2021” is available at:

<https://www.pcouncil.org/documents/2020/03/agenda-item-d-3-attachment-1-stock-assessment-report-executive-summary-assessment-of-the-pacific-sardine-resource-in-2019-for-u-s-management-in-2019-20-full-document-electronic-only.pdf/>, and may be obtained from the West Coast Region (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Lynn Massey, West Coast Region, NMFS, (562) 436-2462, *lynn.massey@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the Pacific sardine fishery in the U.S. exclusive economic zone (EEZ) off the West Coast (California, Oregon, and Washington) in accordance with the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). The FMP and its implementing regulations require NMFS to set annual catch levels for the Pacific sardine fishery based on the annual specification framework and control rules in the FMP. These control rules include the harvest guideline (HG) control rule, which, in conjunction with the overfishing limit (OFL) and acceptable biological catch (ABC) rules in the FMP, are used to manage harvest levels for Pacific sardine, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*

This final rule implements the annual catch levels and reference points for the 2020-2021 fishing year. The final rule adopts, without changes, the catch levels and restrictions that NMFS proposed in the rule published on May 27, 2020 (85 FR 31733),

including the OFL and ABC that take into consideration uncertainty surrounding OFL, including uncertainty in the current estimate of biomass for Pacific sardine in the U.S. EEZ off the U.S. West Coast. The proposed rule for this action included additional background on the specifications and details of how the Pacific Fishery Management Council (Council) derived its recommended specifications for Pacific sardine. Those details are not repeated here. For additional information on this action, please refer to the proposed rule (85 FR 31733).

Table 1 – Harvest Specifications for the 2020-2021 Sardine Fishing Year in Metric Tons (mt)

Biomass Estimate	OFL	ABC	HG	ACL	ACT
28,276	5,525	4,288	0	4,288	4,000

This final rule implements an OFL of 5,525 mt and an ABC and an annual catch limit (ACL) of 4,288 mt. These reference points are based on the control rules and management framework in the CPS FMP and on an estimate of Pacific sardine biomass of 28,276 mt from a stock assessment completed by NMFS Southwest Fishery Science Center. The Council and NMFS determined this stock assessment to be the best scientific information available for setting Pacific sardine harvest specifications for the 2020-2021 fishing year.

Additionally, this rule implements an annual catch target (ACT) of 4,000 mt, as well as restrictions on the incidental catch of Pacific sardine by other fisheries and a trip limit that could be imposed on directed fishing for sardine as live bait (see below list of management and accountability measures). The annual harvest limits and management measures were developed in the context of the fact that NMFS declared the Pacific sardine stock overfished in July 2019. Since the biomass remains below its minimum

stock size threshold (MSST) of 50,000 mt, the FMP requires that incidental catch of Pacific sardine in other CPS fisheries be limited to an incidental allowance of no more than 20 percent by weight (instead of a maximum of 40 percent allowed when below the CUTOFF (i.e., 150,000 mt threshold below which primary directed harvest is not allowed but above the MSST).

The final specifications include the following management measures and inseason accountability measures for commercial sardine harvest during the 2020-2021 fishing year:

(1) If landings in the live bait fishery reach 2,500 mt, then a 1-mt per trip limit of sardine will apply to the live bait fishery.

(2) A 20-percent incidental per landing by weight catch allowance will apply to other CPS primary directed fisheries (*e.g.*, Pacific mackerel).

(3) If the ACT of 4,000 mt is attained, then a 1-mt per trip limit of sardine will apply to all CPS fisheries (*i.e.*, 1) and 2) would no longer apply).

(4) An incidental per landing allowance of 2 mt of sardine in non-CPS fisheries.

All sources of catch including any EFP set-asides, the live bait fishery, and other minimal sources of harvest, such as incidental catch in CPS and non-CPS fisheries, and minor directed fishing, will be accounted for against the ACT and ACL.

The NMFS West Coast Regional Administrator will publish a notice in the **Federal Register** to announce when catch reaches the incidental limits as well as any changes to allowable incidental catch percentages. Additionally, to ensure that the regulated community is informed of any closure, NMFS will make announcements

through other means available, including emails to fishermen, processors, and state fishery management agencies.

At the April 2020 Council meeting, although formal review and approval was removed from the Council's agenda, they expressed support for three EFP proposals requesting an exemption from the prohibition to directly harvest sardine during their discussion of sardine management measures. This action accounts for NMFS' potential approval of up to 1,145 mt of the ACL to be harvested under EFPs.

Comments and Responses

On May 27, 2020, NMFS published a proposed rule for this action and solicited public comments (85 FR 31733) through June 11, 2020. NMFS received two public comments relevant to the proposed rule – one from the CPS industry group California Wetfish Producers Association (CWPA) and one from the environmental group Oceana. The CWPA supported the proposed rule in its entirety. After considering the public comments, no changes were made from the proposed rule. NMFS summarizes and responds to the comment letter from Oceana below.

Comment 1: Oceana supported the prohibition on primary directed fishing for Pacific sardine, but requested that NMFS further reduce Pacific sardine mortality by setting a lower ACL (1,000 mt) and that this ACL be apportioned across the fisheries that incidentally catch Pacific sardine, the live bait and minor directed fisheries in some manner not described in the comment. Oceana also requested that directed fishing under EFPs not be allowed. Oceana states that a 1,000-mt ACL and their additionally proposed management measures would “better protect the stock and dependent predators during this time of collapse.” In addition to commenting on the proposed rule, Oceana also

requested reconsideration of various aspects of Pacific sardine management and provided recommendations on changes to Pacific sardine management that are not within the scope of this action. These recommendations included changing the start date of the fishery, revising the MSST value, reinitiating the Endangered Species Act (ESA) consultation, and modifying various parameters in the OFL, ABC, and HG control rules, such as Emsy, CUTOFF and Distribution.

Response: NMFS agrees with Oceana regarding the prohibition on primary directed fishing. Changes to the management framework of Pacific sardine and to the Pacific sardine harvest control rules are set in the CPS FMP and are beyond the scope of this rulemaking. NMFS notes that some of these changes, such as to the value for the Distribution parameter in the Pacific sardine harvest control rules and the MSST, have been previously reviewed during specific agenda items at Council meetings. For example, in 2015, a 3-day meeting was held that included agency and non-agency scientists to review the Distribution parameter. The results of this workshop were then presented to the Council and its advisory bodies, including the Science and Statistical Committee (SSC). The Council subsequently concluded that there was no superior data to inform this parameter. Additionally, NMFS notes that the Distribution parameter in the various Pacific sardine control rules is not a required element dictated by the Magnuson-Stevens Act or National Standard 1. Instead, it is an additional precautionary policy adopted and used by the Council to further reduce the harvest of Pacific sardine beyond what is required. However, NMFS will communicate other concerns to the Council for their consideration during related future management planning for the Pacific

sardine stock. NMFS is aware of the scientific literature attached by Oceana, and will consider it as appropriate in future discussions on Pacific sardine management.

Much of Oceana's commentary about ESA analysis address concerns beyond the scope of the proposed action, and also appear to conflate species listed under the ESA with species not listed, particularly marine predators. Relevant to this action, Oceana did not introduce any new scientific information that would require NMFS to reinitiate consultation under the ESA. NMFS notes that it determined that the 2020-2021 harvest specifications fall well within the scope of impacts to listed species, including listed marine predators, considered under prior consultations for the fishery, and that fishing activities pursuant to this rule are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of critical habitat of any such species.

As it relates to the comment that NMFS should set a lower ACL and further reduce catch in smaller scale fishery sectors, NMFS disagrees that setting a lower ACL is necessary. The ACL should be viewed in the context of the OFL for the northern subpopulation of Pacific sardine of 5,525 mt and the ABC of 4,288 mt that takes into account scientific uncertainty surrounding the OFL. These reference points were recommended by the Council based on the control rules in the FMP and were endorsed by the Council's SSC as the best scientific information available for preventing overfishing. In addition, the management measures adopted by the Council, including an ACT that was set even lower than the ACL (4,000 mt), are more than adequate to ensure catch does not exceed the ACL/ABC and OFL and therefore prevent overfishing.

The assertion in Oceana's comment that NMFS and the Council have set higher catch levels as Pacific sardine has declined is incorrect. Each year that the stock has declined the Council has recommended and NMFS has implemented catch levels commensurate with any decline in the stock. In fact, for this 2020-2021 fishing year the estimated biomass has actually increased from the previous fishing year, however the catch limit has been reduced, which is the opposite of increasing harvest.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the CPS FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness of these final harvest specifications for the 2020-2021 Pacific sardine fishing season. In accordance with the FMP, this rule was recommended by the Council at its meeting in April 2020. The contents of this rule are based on the best scientific information available on the population status of Pacific sardine. Making these final specifications effective on July 1, the first day of the fishing season, is necessary for the conservation and management of the Pacific sardine resource because last year's restrictions on harvest are not effective after June 30. The FMP requires a prohibition on directed fishing for Pacific sardine for the 2020-2021 fishing year because the sardine biomass has dropped below the 150,000-mt threshold for a primary directed commercial fishery. The purpose of this threshold in the FMP, and for prohibiting directed fishing when the biomass drops below this level, is to protect the stock when biomass is low and provide a buffer of spawning stock that is protected from fishing and can contribute to

rebuilding the stock. A delay in the effectiveness of this rule for a full 30 days would result in the re-opening the directed commercial fishery on July 1.

Delaying the effective date of this rule beyond July 1 would be contrary to the public interest because it would jeopardize the sustainability of the Pacific sardine stock. Furthermore, most affected fishermen are aware that the Council recommended that primary directed fishing be prohibited for the 2020-2021 fishing year and are fully prepared to comply with the prohibition.

This final rule is exempt from the procedures of Executive Order 12866 because this action is an annual fishery management specification under the Magnuson-Stevens Act.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act. The factual basis for the certification was published in the proposed rule and is not repeated here. As a result, a regulatory flexibility analysis was not required and none was prepared.

Pursuant to Executive Order 13175, this final rule was developed after meaningful consultation and collaboration with the tribal representative on the Council who has agreed with the provisions that apply to tribal vessels.

This action does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 30, 2020.

Chris Oliver,

Assistant Administrator for Fisheries,

National Marine Fisheries Service.

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